

HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FANAYE TURNER,

Plaintiff,

v.

UNIVERSITY OF WASHINGTON and
BUDDY RATNER,

Defendants.

NO. CV05-1575L

PLAINTIFF'S RESPONSE TO NOTICE
OF DEFENDANTS' BILL OF COSTS

NOTE ON MOTION CALENDAR:
January 17, 2008

Plaintiff Fanaye Turner hereby objects to Defendants Bill of Costs for the reasons set forth below.

A. Fees for Witnesses.

Defendants seek reimbursement for witness lodging and meals far above the maximum per diem allowance proscribed by law.

Local Rule 54 provides in pertinent part: "The attendance, travel, and subsistence fees of witnesses, for actual and proper attendance, shall be allowed in accordance with 28 U.S.C. § 1821. . ." When an overnight stay is required because the court is so far from the witness' residence as to prohibit return thereto from day to day, "[a] subsistence allowance for a witness shall be paid in an amount not to exceed the maximum per diem allowance prescribed by the

1 Administrator of General Services, pursuant to section 5702(a) of title 5, for official travel in the
2 area of attendance by employees of the Federal Government.” 28 U.S.C. § 1821(d)(1).

3 Attached hereto is the U.S. General Services Administration Domestic Per Diem Rates
4 for the State of Washington. Declaration of Katherine C. Chamberlain (“Chamberlain Dec”),
5 Ex. 1. The maximum lodging rate for Seattle is \$152 per night, excluding taxes. The maximum
6 per diem for meals and incidental expenses is \$64 per day (\$12 for breakfast, \$18 for lunch, \$31
7 for dinner, and \$3 for incidental expenses).

8 The Court may tax only those costs explicitly authorized by statute and only for the
9 amounts authorized by statute. *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 445
10 (1987) (holding that “absent explicit statutory or contractual authorization for the taxation of the
11 expenses of a litigant’s witness as costs, federal courts are bound by the limitations set out in 28
12 U.S.C. § 1821 and § 1920.”).

13 1. Hotel Stay

14 Plaintiff challenges the following bills for lodging:

15 \$581.41 for the lodging of Cindy Long (2 nights). Dkt. No. 84, pg. 9.

16 \$601.12 for the lodging of Alma Weightman (2 nights). Dkt. No. 84, pg. 10.

17 \$665.12 for the lodging of Rita Jensen (2 nights)¹. Dkt. No. 84, pg. 18, 19.

18 \$323.68 for the lodging of Mike Keller (1 night).² Dkt. No. 84, pg. 9.

19 TOTAL: \$2,171.33

21 ¹ It appears that Defendants seek \$665.12 for the lodging of Ms. Jensen. Although the hotel receipt states
22 \$711.36 as the total amount charged, an “Expense Reimbursement Form” indicates that that amount was
23 reduced by \$46.24 “for spouse.” Dkt. No. 84, pgs. 18, 19.

24 ² Defendants have submitted two Westin hotel receipts for Mike Keller’s hotel stay, one for \$323.68 and
25 one for \$569.08. Dkt. No. 84, pgs. 9, 14. Defendants’ spreadsheet titled “Fees for Witnesses” indicates
26 that they seek \$577.50 for Mike Keller’s hotel and subsistence. Dkt. No. 84, pg. 5. Defendants seek
reimbursement of \$253.82 for Mike Keller’s “unreimbursed expenses.” Dkt. No. 84, pg. 11. The
amounts \$323.68 (one of the hotel receipts) and \$253.82 (the “unreimbursed expenses”) total \$577.50
(the amount stated on Defendants’ spreadsheet). Therefore, Plaintiff assumes that Defendants are seeking
reimbursement for \$323.68 hotel stay.

1 First, Plaintiff objects to this bill for lodging because the amounts paid for lodging far
 2 exceed the statutory maximum. In total, Defendants request reimbursement for six (6) nights at
 3 approximately \$280 or more³ per night per person, excluding taxes. The maximum per diem
 4 lodging rate allowed by 28 U.S.C. § 1821 is \$152 per night, and the amount to be taxed for six
 5 nights should, therefore, be \$912 plus taxes.

6 Second, Plaintiff objects to this bill for lodging because several of Defendants' witnesses
 7 stayed two nights in Seattle where clearly only one night was necessary. "A subsistence
 8 allowance shall be paid to a witness when an overnight stay is required at the place of attendance
 9 *because such place is so far removed from the residence of such witness as to prohibit return*
 10 *thereto from day to day.*" 28 USC §1821(d)(1) (emphasis added).

11 Rita Jensen's testimony concluded on October 30 in the early afternoon. Chamberlain
 12 Dec., ¶ 4. Rita Jensen lives in Winthrop, Washington, approximately 244 miles from Seattle.
 13 Chamberlain Dec., Ex. 2. The hotel receipt for Rita Jensen indicates that she arrived on October
 14 29 and departed on October 31. Dkt. No. 84, pg. 19. Ms. Jensen's home is not so far from the
 15 court as to prohibit her from returning thereto on the day she testified, October 30. Therefore,
 16 Plaintiff should not be taxed for Ms. Jensen's second night in the hotel.

17 Cindy Long was the first witness to testify on the morning of October 30, 2007. Her
 18 testimony concluded that morning. Chamberlain Dec., ¶ 4. The hotel receipt for Cindy Long's
 19 hotel stay indicates that she arrived on October 30 (the day she testified) and that she departed
 20 two days later on November 1, 2007. Dkt. No. 84, pg. 9. Plaintiff should not be taxed for the
 21 second night of Ms. Long's stay.

22 For these reasons, the maximum amount to be taxed against Plaintiff for witness lodging
 23 should be for \$608.00 plus taxes (four (4) nights at \$152 per night = \$608.00).

25 ³ The exact room rate is not clear. In total, Defendants request reimbursement of \$2,171.33 (this amount
 26 divided by 6 is \$361.88 per night). Some of the hotel receipts are itemized and others are not. Those that
 are itemized, state \$280 as the "room charge," while others state various amounts well over \$280 and
 appear to include taxes and various other charges. See Dkt. 84, pgs. 9, 10, 14, and 19.

2. Meals

Defendants also have submitted to the Court meal costs exceeding the maximum per diem rate of \$64 or the specific meal limits imposed by federal law.

Plaintiff challenges the following bills for meals:

a) \$70 for Mike Keller's October 30 dinner.

Pursuant to 28 U.S.C. § 1821(d)(1) and the U.S. General Services Administration Domestic Per Diem Rates for the State of Washington, the maximum amount that may be taxed for a dinner is \$31, therefore, the amount taxed for this meal should be \$31.

b) \$26.90 for Mike Keller's October 31 lunch.

The maximum that may be taxed for a lunch is \$18. Therefore, the amount taxed for this meal should be \$18. 28 U.S.C. § 1821.

c) \$32 for Mike Keller's October 31 dinner.

Defendants did not submit a receipt for this meal to the court. Defendants failed to prove that this cost was incurred. Therefore, Plaintiff should not be taxed for this meal.

d) \$5.20 for Mike Keller's October 31 breakfast.

Defendants did not submit a receipt for this meal to the court. Defendants failed to prove that this cost was incurred. Therefore, Plaintiff should not be taxed for this meal.

e) \$36.50 for Rita Jensen's meals.

Defendants did not submit receipts for any of Rita Jensen's meals. Defendants failed to prove that these costs were incurred. Therefore, Plaintiff should not be taxed for these meals.

f) \$55.25 for Alma Weightman's October 30 dinner.

The maximum amount that may be taxed for a dinner is \$31. Therefore, the amount taxed for this meal should be \$31. 28 U.S.C. § 1821.

1 In total, Defendants seek reimbursement of \$547.8 for “subsistence.”⁴ For the reasons
2 stated above, the amount taxed against Plaintiff for witness meals should be only \$401.95.

3 B. Fees of the court reporter for all or any part of the transcript necessarily obtained
4 for use in the case.

5 The clerk may tax as costs the “[f]ees of the court reporter for all or any part of the
6 stenographic transcript necessarily obtained for use in the case.” 28 U.S.C. § 1920. Defendants
7 have submitted to the clerk a Bill of Costs that includes fees of \$3,196.50 for the original written
8 transcript of the deposition of Fanaye Turner as well as the original video set of the deposition of
9 Fanaye Turner. These are \$1,879.00 and \$1,317.50 respectively.

10 Defendants are not entitled to both the costs of transcribing and videotaping a deposition
11 unless they can show that one would not have been sufficient for use in the case. *See Cherry v.*
12 *Champion*, 186 F.3d 442, 448-49 (4th Cir. 1999) (holding that a defendant is not entitled to
13 recovery of both the cost of the video and the transcript of a deposition where it failed to make a
14 showing why either a video or a transcript would not have been sufficient). “The concept of
15 necessity for use in the case connotes something more than convenience or duplication to ensure
16 alternative methods for presenting materials at trial.” *Id.* at 449; *see also Nederhiser v.*
17 *Foxworth*, 2007 U.S. Dist. LEXIS 34196 (D. Or. 2007). Defendants cannot make such a
18 showing. This was a bench trial and the videotape was of marginal, if any, value. It was used
19 only once and in the opening. It had no evidentiary value. Therefore, the costs of the videotape
20 (\$1,317.50) may not be taxed against Plaintiff.

21 C. Fee for Service of Subpoena

22 Defendants seek reimbursement for the “Service of Subpoena for Medical Records from
23 Jonathan Kantor” of \$170.00. Fees for service of subpoenas are not included on the list of
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25 _____
26 ⁴ Defendants do not list a total amount sought for subsistence only. Defendants’ spreadsheet lists “hotel
and subsistence” together with a total of \$2719.13. As stated above, it appears that Defendants seek
\$2,171.33 for lodging and therefore \$547.80 for meals (\$2,171.33 + \$547.80 = \$2,719.13).

1 expenses the court may tax as costs. *See* 28 USC §1920.⁵ Absent express statutory
2 authorization, the Court may only tax costs as specifically authorized by 28 USC §1920.
3 *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 441-445 (1987). Therefore, the cost of
4 service of the subpoena may not be taxed against Plaintiff.

5 For these reasons, any costs awarded to Defendants must be limited as outlined above.

6 DATED this 14th day of January, 2008.

7 MacDONALD HOAGUE & BAYLESS

8
9 By /s/ Katherine C. Chamberlain
10 Andrea Brenneke, WSBA #22027
11 Katherine C. Chamberlain, *Pro Hac Vice*
12 Attorneys for Plaintiff
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21 ⁵ Section §1920 provides as follows:

22 “A judge or clerk of any court of the United States may tax as costs the following:

23 (1) Fees of the clerk and marshal;

24 (2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for
25 use in the case;

26 (3) Fees and disbursements for printing and witnesses;

(4) Fees for exemplification and copies of papers necessarily obtained for use in the case;

(5) Docket fees under section 1923 of this title [28 USCS § 1923];

(6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses,
and costs of special interpretation services under section 1828 of this title [28 USCS § 1828].

A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree.”

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2008, I electronically filed the foregoing to the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

- **Michael Madden**
mmadden@bblaw.com,ecf@bblaw.com
- **Marie Renee Westermeier**
mwestermeyer@bblaw.com,ecf@bblaw.com

By /s/ Katherine C. Chamberlain
Andrea Brenneke, WSBA No. 22027
abrenneke@mhb.com
1500 Hoge Building
705 Second Avenue
Seattle, WA 98104-1745
Phone: 206-622-1604
Fax: 206-343-3961
Attorneys for Plaintiff